IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 770/2002
(Rajendra Gulecha Vs. State of Rajasthan & Anr.)

Date of Order : 15/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. H.M.Saraswat for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
None present for the non-petitioner No.2.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 25.6.2002 passed by Judicial Magistrate, Ist Class, No.5, Jodhpur (for short 'the trial court' hereinafter), whereby the trial court dismissed the application filed by the petitioner under Section 258 Cr.P.C.

I have heard learned counsel for the petitioner and public prosecutor for the State. No one appears for the non-petitioner No.2 despite repeated calls. Carefully gone through the order impugned as also the record of the trial court.

The facts and circumstances giving rise to the present petition are that on a first information report lodged by

complainant non-petitioner No.2 with Police Station Sadar Bazar, Jodhpur, being FIR No.44/99, the police investigated the matter and filed a negative final report on the ground that the matter is of civil nature. On notice to the non-petitioner No.2 complainant, he filed a protest petition, however did not produce any evidence and as such no statement of witnesses under Section 200-202 was recorded by the trial court. The trial Court took the cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter) by order dated 12.7.1999. During the pendency of the case, the accused petitioner filed an application under Section 258 Cr.P.C. seeking dropping of proceeding on the ground that the cheque in question is dated 10.3.1998 which was presented to the Bank on 11.3.99 after expiry of its validity period. That application came to be dismissed by the trial court by order dated 25.6.2002.

The cheque in question is on record which bears the issuance date as 10.3.1998. On the reverse of the cheque, there is a seal of Oriental Bank of Commerce which bear the date 11.3.99. Thus, it is evident from the seal affixed by the Oriental Bank of Commerce that the cheque was presented on 10.3.1999 on which date the cheque was returned unpaid.

It is contended by learned counsel for the petitioner firstly that the cheque was presented to the bank by the non-petitioner No.2 after expiry of its validity period. The validity

period of a cheque is six months from the date of its issuance. Obviously the cheque in question was issued on 10.3.98 and was presented on 10.3.1999 almost after expiry of one year period from the date of its issuance. It was further contended that Section 142 (a) of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no Court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque, and in the instant case, no complaint in writing was made by the payee or, the holder in due course of the cheque, therefore, Section 142 creates a bar to take cognizance of offence under Section 138 of the Act. Learned counsel has relied on a decision of kanataka High Court in H. Mohan and another Vs. State of Karnataka 1991 Cri. L.J., 1866, wherein it has been held that it is clear from the language employed in S. 142 of the Act that no Court shall take cognizance of any offence punishable under S. 138 except upon a written complaint made by the payee. It means that the payee has to file a private complaint under S. 200 Cr.P.C. before the competent Magistrate and the police are not empowered to act upon a private complaint filed for an offence under S. 138 of the Act.

In the instant case, it is clear from the record that no complaint in writing has been filed by the payee or the holder of

the cheque in due course and therefore, in my view, the court below fell in error in taking cognizance of the offence.

In the result, the criminal misc. petition is allowed. The order impugned dated 25.6.2002 passed by Judicial Magistrate, Ist Class No.5, Jodhpur is set aside and the criminal proceeding in Criminal Case No. 1226/2001 against the present petitioner stands quashed.

(H.R.PANWAR),J.

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